IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1254 of 2007

Samim` .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai-9.

2. The District Collector
and District Magistrate
Thiruvannamalai District
Thiruvannamalai. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.V.Elangovan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Abdul Razak, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2.1. The order of detention dated 14.5.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.130 of 2007 on the file of Thiruvannamalai Taluk Police Station for the offences punishable under Sections 4(1)(i) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act, based on the complaint of one Elumalai, who consumed liquor purchased from the detenu and felt burning sensation in eyes and stomach, vomited and fell down. After investigation, the detenu was arrested and the contraband was seized. The samples were sent for chemical analysis and report reveals that the sample of arrack contained 6.7%mg of Atropine per 100 ml, and the same would endanger life.

2.2. Apart from the above, the detaining authority also took note of six adverse cases pending against the detenu, viz., Crime Nos.64, 89 and 101 of 2007 and 450 and 504 of 2006 on the file of Tiruvanamallai Taluk Police Station and Crime Nos.151 of 2007 on the file of Tiruvannamalai Prohibition Enforcement Wing all for the offences punishable under Sections 4(1)(aa), 4(1)(i) of the Tamil Nadu Prohibition Act.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. Challenging the said detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to the order made in D.O.No.27/2007-C2, dated 14.5.2007 in detaining the detenu as a bootlegger, to quash the same and to direct the respondents to produce the detenu, who is detained at Central Prison, Vellore, before this Court and to set him at liberty.

4. Heard Mr.V.Elangovan, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation and the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant

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provisions of law, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .*

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide *Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.*

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide *Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.*

6.5. *It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.*

7. In the instant case, the impugned order of detention came to be passed on 14.5.2007. A representation was made to the Government and the same was received by it on 21.8.2007. Remarks were called for from the detaining authority on 22.8.2007. The detaining authority, after obtaining the remarks of the Sponsoring Authority,

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sent its report to the Government on 25.8.2007 and the same was received on 28.8.2007 by the Government, however, the file was submitted for consideration of the Under Secretary only on 5.9.2007, viz., after 6 days, excluding 2 public holidays. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention.

8. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194* is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476*

The delay on six days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 14.5.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

sasi

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Secretary to Government
   State of Tamilnadu
   Home, Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Collector
   and District Magistrate
   Tiruvannamalai District
   Tiruvannamalai.

3. The Public Prosecutor
   High Court, Madras.

4. The Superintendent
   Central Prison, Vellore.
(In duplicate for communication to detenue)
5. The Joint Secretary to Government
   Public (Law and Order)
   Fort St. George, Chennai-9.

Sr (co)

dv/7.12.

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